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Mary Meeker, and Simon Williams

10 [additional counsel appear on the signature page]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

14 RICCARDO BARON, Derivatively on Behalf) Case No. 18-cv-04391-BLF
of LENDINGCLUB CORPORATION,)
15 Plaintiff,) **STIPULATION AND [PROPOSED]**
16 v.) **ORDER VOLUNTARILY**
17 SCOTT SANBORN, ET AL.,) **DISMISSING ACTIONS WITHOUT**
18 Defendants,) **PREJUDICE**
19 -and-)
20 LENDINGCLUB CORPORATION,)
Nominal Defendant.)

21 RAJENDER CHEEKATAMARLA,) Case No. 19-cv-00563-BLF
Derivatively on Behalf of LENDINGCLUB)
CORPORATION,)
22 Plaintiff,)
v.)
23 SCOTT SANBORN, ET AL.,)
Defendants,)
24 -and-)
25 LENDINGCLUB CORPORATION,)
Nominal Defendant.)
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**STIPULATION AND [PROPOSED] ORDER
DISMISSING ACTIONS WITHOUT PREJUDICE |
CASE NOS. 18-cv-04391-BLF & 19-cv-00563-BLF**

Pursuant to Rules 23.1(c) and 41(a) of the Federal Rules of Civil Procedure, plaintiffs Riccardo Baron (“Baron”) and Rajender Cheekatamarla (“Cheekatamarla,” and with Baron, “Plaintiffs”), nominal defendant LendingClub Corporation (“LendingClub” or the “Company”), and defendants Scott Sanborn, Thomas Casey, Carrie Dolan, Steve Allocca, Sameer Gulati, Renaud Laplanche, John Morris, Dan Ciporin, Ken Denman, John Mack, Timothy Mayopoulos, Patty McCord, Mary Meeker, and Simon Williams (the “Individual Defendants,” and with LendingClub, “Defendants”) (collectively, the “Parties”), by and through their counsel, respectfully request that the Court enter an Order voluntarily dismissing the above-captioned actions without prejudice. The Parties state as follows:

WHEREAS, on July 19, 2018, Baron filed a putative shareholder derivative action purportedly on behalf of LendingClub asserting claims for, among other things, alleged breaches of fiduciary duties and violations of the Securities Exchange Act of 1934 (“Exchange Act”) against the Individual Defendants, *see Baron v. Sanborn, et al.*, Case No. 18-cv-04391-BLF (N.D. Cal.), ECF 1 (the “*Baron Action*”);

WHEREAS, on January 31, 2019, Cheekatamarla filed a substantially similar putative shareholder derivative action purportedly on behalf of LendingClub against most of the Individual Defendants, *see Cheekatamarla v. Sanborn, et al.*, Case No. 19-cv-00563-BLF (N.D. Cal.), ECF 1 (the “*Cheekatamarla Action*”);

WHEREAS, on April 25, 2019, the Court entered an order consolidating the *Cheekatamarla Action* with the *Baron Action* (collectively, the “Consolidated Derivative Actions”), *see Baron Action*, ECF 29;

WHEREAS, the Consolidated Derivative Actions are based on the same facts and circumstances alleged, and involve substantially the same defendants named, in a putative federal securities class action that was filed in this Court on May 2, 2018, captioned *Veal v. LendingClub Corp., et al.*, Case No. 18-cv-02599-BLF (N.D. Cal.) (the “Securities Action”);

WHEREAS, the Consolidated Derivative Actions, like the Securities Action, assert that certain of the Individual Defendants committed violations of the Exchange Act, challenge as false and misleading substantially the same alleged misstatements at issue in the Securities Action, and

1 allege damages to LendingClub arising, in part, from a potential adverse judgment against the
 2 Company in the Securities Action;

3 WHEREAS, on October 4, 2019, the Court entered an order pursuant to Civil Local Rule
 4 3-12 formally relating the Consolidated Derivative Actions to the Securities Action and stating
 5 that the Court was “inclined to stay the Derivative Action, pending the resolution of the Securities
 6 Action,” Securities Action, ECF 89 at 1;

7 WHEREAS, on October 15, 2019, the Court entered an order staying the Consolidated
 8 Derivative Actions “pending the resolution of the Securities Action,” *Baron* Action, ECF 37 at 2;

9 WHEREAS, on November 4, 2019, the Court entered an order granting the defendants’
 10 motions to dismiss the first amended complaint in the Securities Action with leave to amend, *see*
 11 Securities Action, ECF 92;

12 WHEREAS, on June 12, 2020, the Court entered an order granting the defendants’ motion
 13 to dismiss the second amended complaint in the Securities Action with leave to amend in part,
 14 and without leave to amend in part, *see* Securities Action, ECF 113;

15 WHEREAS, on July 27, 2020, the plaintiffs in the Securities Action informed the Court
 16 that they did not intend to file a third amended complaint, and the Court accordingly entered a
 17 judgment in the Securities Action dismissing the plaintiffs’ claims with prejudice, *see* Securities
 18 Action, ECF 117-118;

19 WHEREAS, on July 27, 2020, the Court entered an order lifting the stay of the
 20 Consolidated Derivative Actions and directing the Parties to advise the Court at the case
 21 management conference set for September 24, 2020, on the future of the Consolidated Derivative
 22 Actions “in light of the dismissal of the Securities Action,” *Baron* Action, ECF 39 at 1;

23 WHEREAS, given that the Consolidated Derivative Actions assert Exchange Act and
 24 state law disclosure claims against substantially the same defendants named, and based on
 25 substantially the same alleged misstatements at issue, in the Securities Action, and allege
 26 damages to LendingClub arising, in part, from a potential adverse judgment against the Company
 27 in the Securities Action, Plaintiffs have determined that, in light of the dismissal of the Securities
 28 Action, prosecution of the Consolidated Derivative Actions would be a waste of Court and Party

1 resources, and would not be in the best interests of LendingClub, and thus Plaintiffs have agreed
 2 to voluntarily dismiss the Consolidated Derivative Actions without prejudice, with each Party to
 3 bear their own costs and fees; and

4 WHEREAS, the Parties respectfully submit that notice of the voluntary dismissal of the
 5 Consolidated Derivative Actions is unnecessary to protect the interests of LendingClub and its
 6 shareholders because: (i) Plaintiffs seek dismissal without prejudice; (ii) there has been no
 7 settlement or compromise; (iii) there has been no collusion among the Parties; and (iv) neither
 8 Plaintiffs nor their counsel have received or will receive any consideration from Defendants for
 9 the dismissal. *See, e.g., Police Ret. Sys. of St. Louis v. Flynn*, Case No. 14-cv-00190-LHK (N.D.
 10 Cal. Aug. 6, 2014), ECF 35 (order approving, under similar circumstances, parties' stipulation to
 11 voluntarily dismiss derivative action without requiring notice); *Burlingame v. Martin*, Case No.
 12 11-cv-6703-CW (N.D. Cal. Apr. 12, 2013), ECF 40 (same).

13 **RELIEF REQUESTED**

14 NOW THEREFORE, the Parties STIPULATE and AGREE, and request that the Court
 15 enter an Order approving the voluntary dismissal of the Consolidated Derivative Actions pursuant
 16 to Rules 23.1(c) and 41(a) of the Federal Rules of Civil Procedure, as follows:

- 17 1. The *Baron* Action (Case No. 18-cv-04391-BLF) is dismissed without prejudice;
 18 2. The *Cheekatamarla* Action (Case No. 19-cv-00563-BLF) is dismissed without
 19 prejudice;
 20 3. For the reasons stated above, notice of said dismissals is not required; and
 21 4. Each Party shall bear their own costs and fees.

22 **IT IS SO STIPULATED.**

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1 Dated: August 11, 2020

ORRICK, HERRINGTON & SUTCLIFFE LLP

2 */s/ Alexander K. Talarides*

3 Alexander K. Talarides

4 *Attorneys for Nominal Defendant LendingClub
Corporation and Defendants Scott Sanborn, Steve
Allocca, Sameer Gulati, Thomas W. Casey, John C.
Morris, Dan Ciporin, Ken Denman, John Mack,
Timothy J. Mayopoulos, Patty McCord, Mary
Meeker and Simon Williams*

5

6 Dated: August 11, 2020

MILBANK LLP

7 */s/ Robert J. Liubicic*

8 Robert J. Liubicic

9 *Attorneys for Defendant Renaud Laplanche*

10

11 Dated: August 11, 2020

MORGAN, LEWIS & BOCKIUS LLP

12 */s/ Lucy Wang*

13 Lucy Wang

14 *Attorneys for Defendant Carrie Dolan*

15 Dated: August 11, 2020

BRAGAR, EAGEL & SQUIRE P.C.

16 */s/ David J. Stone*

17 David J. Stone

18 *Attorneys for Plaintiff Riccardo Baron*

19

20 Dated: August 11, 2020

GAINY, MCKENNA & EGLESTON LLP

21 */s/ Thomas J. McKenna*

22 Thomas J. McKenna

23 *Attorneys for Plaintiff Rajender Cheekatamarla*

CIVIL L.R. 5-1 ATTESTATION

24

I, Alexander K. Talarides, attest that concurrence in the filing of this document has been
25 obtained from all signatories.

26

27 */s/ Alexander K. Talarides*

28 ALEXANDER K. TALARIDES

ORDER

Based on the stipulation of the signed parties, and good cause appearing, **IT IS HEREBY ORDERED** that the Stipulation is approved and that:

1. The *Baron* Action (Case No. 18-cv-04391-BLF) is dismissed without prejudice;
 2. The *Cheekatamarla* Action (Case No. 19-cv-00563-BLF) is dismissed without prejudice;
 3. For the reasons stated in the Stipulation, notice of said dismissals is not required under Fed. R. Civ. P. 23.1(c); and
 4. Each Party shall bear their own costs and fees.

IT IS SO ORDERED.

DATED: August 11, 2020

Beth Salem Neeman

HONORABLE BETH LABSON FREEMAN
United States District Judge